Relentless Pursuit Enterprises, Inc., d/b/a Lexus of San Diego *and* International Association of Machinists and Aerospace Workers Local Lodge No. 1484, District Lodge 190. Case 21–CA–262730

January 7, 2021

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS EMANUEL AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent, Relentless Pursuit Enterprises, Inc. d/b/a Lexus of San Diego, is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on July 8, 2020,[1] by International Association of Machinists and Aerospace Workers Local Lodge No. 1484, District Lodge 190 (the Union), the General Counsel issued the complaint on October 27, 2020, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 21–RC–255451. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On November 16, 2020, the General Counsel filed a Motion for Summary Judgment. On November 17, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification of representative. Although the Respondent failed to file objections to the results of the election that led to the Union's certification, it contests the Union's certification based on its objections to a prior election and unfair labor practice charges it filed against the Union in connection with that election. The parties, however, agreed to resolve the Respondent's objections by setting aside the prior election and conducting a rerun election, which led to the instant certification. Further, the Region, after investigating, dismissed each of the Respondent's unfair labor practice charges.[2]

Thus, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.[3] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor

[1] Although the Respondent in its answer denies knowledge or information sufficient to form a belief regarding the dates that the charge was filed or served upon the Respondent, the Respondent admits that it received the charge. A copy of the charge is included in the documents supporting the General Counsel's motion, showing the date alleged, and the Respondent has not challenged the authenticity of this document.

[2] The Board takes administrative notice that the Office of Appeals upheld the Region's dismissal of the unfair labor practice charges.

[3] In its answer, the Respondent denies the complaint allegations that the bargaining unit is appropriate, that the Union is the lawful exclusive collective-bargaining representative of the unit, that the Respondent has been failing and refusing to bargain collectively and in good faith with the Union in violation of Sec. 8(a)(5) and (1) of the Act, and that the unfair labor practice affects commerce within the meaning of Sec. 2(6) and (7) of the Act. Those denials do not raise any issues warranting a hearing. The Respondent stipulated to the appropriateness of the unit in the underlying representation proceeding, admits that the Union was certified as the exclusive collective-bargaining representative of the unit, admits that the Union requested recognition and bargaining, and admits that it has refused to bargain with the Union. In addition, by email dated July 17, 2020, the Respondent informed the Region that it intended to test the Union's certification. The Respondent has not challenged the validity of that email, attached as an exhibit to the General Counsel's Motion for Summary Judgment. See *Biewer Wisconsin Sawmill, Inc.*, 306 NLRB 732, 732 (1992) (finding respondent failed and refused to recognize and bargain with the union based on respondent's letter informing regional director that it intended to test certification in unfair labor practice proceeding, notwithstanding respondent's denial in answer to complaint).

The Respondent asserts as affirmative defenses in its answer that the complaint fails to state a claim upon which relief may be granted; that the Respondent has acted for lawful business reasons and justifications; that the allegations are barred by laches, estoppel, and waiver; and that the Union cannot relitigate issues that were or could have been litigated in a prior representation proceeding. The Respondent, however, has not offered any explanation of or evidence to support these bare assertions. Thus, we find that these affirmative defenses are insufficient to warrant denial of the General Counsel's Motion for Summary Judgment in this proceeding. See, e.g., *George Washington University*, 346 NLRB 155, 155 fn. 2 (2005), enfd. mem. per curiam No. 06-1012, 2006 WL 4539237 (D.C. Cir. Nov. 27, 2006); *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995). The Respondent's remaining affirmative defenses recapitulate arguments that were resolved by stipulation between the parties and/or were raised by the Respondent and rejected by the Board in the underlying representation proceeding. Thus, they also do not raise any issue warranting a hearing. See *Wolf Creek Nuclear Operating Corp.*, 366 NLRB No. 30, slip op. at 1 fn. 2 (2018), enfd. mem. 762 F. App'x 461 (10th Cir. 2019).

practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California Corporation, with a facility located at 4970 Kearny Mesa Road, San Diego, California (San Diego Facility) has been engaged in the business of automobile sales and service.

During the 12-month period ending February 10, 2020, a representative period, the Respondent, in conducting its operations described above, derived gross revenues in excess of $500,000. During that same period, the Respondent purchased and received at its San Diego, California facility goods valued in excess of $5000 directly from points located outside of the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit).

> Included: All full-time and regular part-time technicians, foremen, and lube technicians employed by the Employer at its facility currently located at 4970 Kearny Mesa Road, San Diego, California.
>
> Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

Following a mail ballot election held from May 26 to June 16, 2020, the Union was certified on June 24, 2020, as the exclusive collective-bargaining representative of the unit.[4]

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act, and agents of the Respondent within the meaning of Section 2(13) of the Act.

Dan Hansen	Area Vice President
Frank Pierce	General Manager

About June 24, 2020, the Union, by email, requested that the Respondent recognize the Union and bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit. Since about June 24, 2020, the Respondent has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about June 24, 2020, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Relentless Pursuit Enterprises, Inc. d/b/a Lexus of San Diego, San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Association of Machinists and Aerospace

[4] By unpublished Order dated October 15, 2020, the Board denied the Respondent's request for review of the Regional Director's Certification of Representative and denied as moot the Respondent's request to vacate and/or stay the Certification of Election pending the outcome of its unfair labor practice charge.

Workers Local Lodge No. 1484, District Lodge 190 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Included: All full-time and regular part-time technicians, foremen, and lube technicians employed by the Employer at its facility currently located at 4970 Kearny Mesa Road, San Diego, California.
>
> Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

(b) Post at its San Diego, California facility copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 24, 2020.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 7, 2021

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John F. Ring, Chairman

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William J. Emanuel, Member

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Lauren McFerran Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Association of Machinists and Aerospace Workers Local Lodge No. 1484, District Lodge 190 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

[5] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

> Included: All full-time and regular part-time technicians, foremen, and lube technicians employed by the Employer at its facility currently located at 4970 Kearny Mesa Road, San Diego, California.
>
> Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

RELENTLESS PURSUIT ENTERPRISES, INC. D/B/A LEXUS OF SAN DIEGO

The Board's decision can be found at www.nlrb.gov/case/21-CA-262730 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.